

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

JAMES Q. WILKINSON,

Plaintiff,

v.

ELDON VAIL, et al.,

Defendant.

Case No. C05-5656JKA

**ORDER DENYING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND INJUNCTIVE
RELIEF**

This matter comes before the Court on Plaintiff's Motion for Partial Summary Judgment. The court has considered all materials submitted in support of and in response to said motion as well as the files and records herein.

Plaintiff, an African American, was an inmate at Clallam Bay Corrections Center (CBCC) in October of 2002, when he alleges being the victim of a racially motivated brutal assault by white supremacist inmates. Plaintiff further alleges that defendants utilized a racially based placement system when making cell/pod assignments, that the assignment system was unconstitutional, and that it proximately caused injuries and damage to the plaintiff.

Plaintiff's motion is twofold in that it first seeks the court's declaration that the defendants' practice of using race to make housing assignments is unconstitutional and illegal, and second seeks a permanent injunction prohibiting the practice.

Defendants respond alleging the following procedural defects: (1) plaintiff has inadequately articulated the relief he seeks; (2) plaintiff has not sued any individual in their official capacity with authority to implement the type of declaratory relief he seeks; and (3) plaintiff lacks standing. Additionally defendants

1 allege as substantive defenses: (1) defendants' policy to pro-actively avoid racial segregation in housing units
2 to increase inmate safety and rehabilitation is not unconstitutional; and (2) consideration of race among other
3 factors in inmate housing assignments is necessary to achieve the state's compelling interest in prison safety
4 and inmate rehabilitation.

5 Plaintiff cites Richmond v. J.A. Croson Co., 488 U.S. 469 (1989) in support of their Fourteenth
6 Amendment claim, and Johnson v. California, 543 U.S. 499 as authority for a "strict scrutiny" analysis.
7 Setting aside the issues of "standing" and "official capacity of defendants," a review of Richmond is not
8 dispositive. It suggests that even assuming a "strict scrutiny" standard, that this case is not ripe for a conclusive
9 determination at this stage of the proceedings. Not only are there questions of fact with regard to the specifics
10 of this case, there is a question of fact as to what exactly constitutes "racial balancing" as contemplated by
11 higher courts, and how it applies to the facts of this case. Accordingly, the court rules as follows:

- 12 (1) Plaintiff's motion for partial summary judgment and a declaration that defendants "racial balancing"
13 is unconstitutional is denied..
14 (2) Plaintiff's motion for an injunction, must consequently fail at this stage of the proceedings.

15 Dated this 10th day of April 2007.

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17 /s/ J. Kelley Arnold

18 United States Magistrate Judge
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